

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

ALFRED W. TRENKLER

No. 92-CR-10369-WES-2

**DEFENDANT'S NOTICE OF INTENT TO RELY ON SUPPLEMENTAL  
AUTHORITIES AT HEARING**

For the Court's convenience, Mr. Trenkler hereby provides notice of the following new authorities that he intends to cite and/or rely on at the hearing on April 8, 2021.

*With regard to change in CDC's list of COVID-19 medical risk factors:*

- CDC, "People with Certain Medical Conditions" (Mar. 29, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (now listing "overweight" BMI as a medical risk factor, where it was previously listed as a factor that "might" lead to increased risk)

*With regard to vaccine "refusal":*

- AMA Ethics Opinion 2.1.1, <https://www.ama-assn.org/print/pdf/node/6031> ("Informed consent to medical treatment is fundamental in both ethics and law. Patients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care")

*With regard to the existence of extraordinary and compelling reasons, notwithstanding vaccination:*

- *United States v. Joseph Bradshaw*, 96-cr-10032, D.E. 802 (D. Mass Mar. 4, 2021) (granting compassionate release to defendant sentenced to mandatory life imprisonment plus consecutive stacked § 924(c) sentences, notwithstanding receipt of both vaccine doses); *see also* D.E. 803 at 2 (government motion for reconsideration, by AUSA Richardson, arguing that receipt of vaccine defeated once-existing extraordinary and compelling reasons based on defendant's COVID-19 vulnerability); D.E. 812 (denying reconsideration);
- *United States v. Murakami*, 17-cr-10346, D.E. 80 (D. Mass. Feb. 25, 2021) (granting compassionate release to defendant with hypertension, notwithstanding receipt of 1<sup>st</sup> dose of vaccine);
- *United States v. Gordon*, No. 14-cr-10304 (D. Mass. Feb. 23, 2021) (granting compassionate release, notwithstanding defendant's refusal of vaccine).

*With regard to efficacy of a single dose of vaccine:*

- Edward H. Livingston, M.D., Necessity of 2 Doses of the Pfizer and Moderna COVID-19 Vaccines, *JAMA* (Feb. 3, 2021), <https://jamanetwork.com/journals/jama/fullarticle/2776229> (“Two doses of the Pfizer and Moderna COVID-19 vaccines are necessary to confer adequate immunity”)

*With regard to existing COVID-19 variants, against which vaccines are less effective:*

- Centers for Disease Control and Prevention, “About Variants of the Virus that Causes COVID-19” (Feb. 12, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> ;
- Morris, “ASU watching new COVID-19 ‘Arizona variant’ with a mutation known to weaken vaccines,” *Arizona Republic* (Apr. 1, 2021), <https://www.azcentral.com/story/news/local/arizona-science/2021/04/01/arizona-covid-19-variant-detected-arizona-state-university-researchers-could-weaken-vaccines/4810389001/> (stating, of **B.1.243.1** variant, “Numerous studies have shown that this mutation — located in the spike of the virus — lowers antibody responses to the virus and could weaken vaccines”);

- Solis-Moreira, “New coronavirus variant with E484K mutation detected in Arizona,” *News Medical Life Sciences* (Mar. 30, 2021), <https://www.news-medical.net/news/20210330/New-coronavirus-variant-with-E484K-mutation-detected-in-Arizona.aspx> (stating, of **B.1.243.1** variant, “[the] mutation is concerning for its ability to escape the immune response and reduce monoclonal antibodies' neutralizing power”);
- Joseph, “Moderna’s vaccine is less potent against one coronavirus variant but still protective, company says” (Jan. 25, 2021), <https://www.statnews.com/2021/01/25/moderna-vaccine-less-effective-variant/> (“scientists found that there was a sixfold reduction in the vaccine’s neutralizing power against the variant, called **B.1.351**, than against earlier forms of the coronavirus, Moderna reported”);
- Moderna, “Moderna Announces it has Shipped Variant-Specific Vaccine Candidate, mRNA-1273.351, to NIH for Clinical Study” (Feb. 24, 2021), <https://investors.modernatx.com/news-releases/news-release-details/moderna-announces-it-has-shipped-variant-specific-vaccine> (Moderna working on booster vaccine to address **B.1.351** variant).

*With regard to potential evolution of COVID-19 variants against which current vaccines will not be effective:*

- Rubin, “COVID-19 Vaccines vs Variants—Determining How Much Immunity Is Enough,” *JAMA*. 2021;325(13):1241-1243 (Mar. 17, 2021), <https://jamanetwork.com/journals/jama/fullarticle/2777785> (quoting FDA chief scientist Jesse Goodman as stating, “Even if we don’t have a critical situation right at the moment...there’s a realistic possibility that variants will continue to evolve that have potential to avoid vaccine immunity,” and Dr. Anthony Fauci as stating “you still have a fixed immunogen and a virus that’s changing. Sooner or later, you’re going to get a mutant that evades that.”)

*With regard to “break-through infection” - people who are fully vaccinated and still contract COVID-19:*

- KJ Shamus, “246 fully vaccinated Michiganders got COVID-19 between January and March, state reports,” *Detroit Free Press* (Apr. 6, 2021), <https://www.freep.com/story/news/local/michigan/2021/04/06/vaccinated-covid-19-contract-virus-coronavirus/7101678002/> (“State health officials say

246 fully vaccinated Michiganders contracted coronavirus from January to March, and three have died.).

Respectfully submitted,

**ALFRED TRENKLER**

By his attorneys,

/s/ Nancy Gertner

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**CERTIFICATE OF SERVICE**

I, Nancy Gertner, as counsel to Defendant Alfred Trenkler, certify that on April 7, 2021, I caused the foregoing document to be served by ECF on the registered participants as indicated on the Notice of Electronic Filing.

/s/ Nancy Gertner

Nancy Gertner